

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SUSAN F.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 3:22-cv-05661-TL

ORDER AFFIRMING
DENIAL OF BENEFITS

Plaintiff Susan F. seeks review of the denial of her application by Defendant Commissioner of Social Security for Supplemental Security Income (“SSI”) under Title XVI. This matter is before the Court on Plaintiff’s Complaint for Judicial Review of Social Security Benefits (Dkt. No. 3). Having reviewed Plaintiff’s Opening Brief (Dkt. No. 14), Defendant’s Response Brief (Dkt. No. 18), Plaintiff’s Reply Brief (Dkt. No. 19), and the relevant record, the Court AFFIRMS Defendant’s final decision and DISMISSES the matter with prejudice.

I. BACKGROUND

Plaintiff is 59 years old, has at least a high school education, and has no past relevant work. Dkt. No. 6-3 at 162. Plaintiff first applied for SSI and Disability Insurance Benefits (DIB) on December 21, 2016, alleging a disability onset date of January 1, 2004. Dkt. No. 6-3 at 20–21, 32–33, 46–47, 67–68. Plaintiff’s applications were denied initially and on reconsideration. *Id.* at 30, 42, 87, 112. After the ALJ conducted a hearing on October 2, 2020, the ALJ issued a decision on December 7, 2020, finding Plaintiff not disabled. Dkt. No. 6-2 at 33–56; Dkt. No. 6-3 at 114–138. On August 23, 2021, the Appeals Council vacated the ALJ’s December 2020 decision and remanded Plaintiff’s case for further proceedings. Dkt. No. 6-3 at 139–43. The ALJ conducted another hearing on February 17, 2022. Dkt. No. 6-2 at 57–88. During that hearing, Plaintiff amended her alleged onset date to December 21, 2016. *Id.* at 66, 69, 85–86. Because Plaintiff’s date last insured is March 31, 2006, the change of Plaintiff’s alleged onset date resulted in the withdrawal of her DIB application. Dkt. No. 6-2 at 67–69; Dkt. No. 6-3 at 149; 20 C.F.R. § 404.131 (“To establish a period of disability, you must have disability insured in the quarter in which you become disabled or in a later quarter in which you are disabled.”). The ALJ issued another decision on April 5, 2022, finding that based on her SSI application, Plaintiff was not disabled from her amended alleged onset date of December 21, 2016, through the date of the ALJ’s decision. Dkt. No. 6-3 at 145–76. Plaintiff now seeks review of the ALJ’s April 2022 decision.

II. LEGAL STANDARD

A. Standard of Review

This Court may set aside the Commissioner’s denial of Social Security benefits only if the ALJ’s decision is based on legal error or not supported by substantial evidence in the record.

1 *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020); *see also Havens v. Kijakazi*, No. 21-35022,
 2 2022 WL 2115109, at *1 (9th Cir. June 13, 2022) (applying the standard and reversing ALJ's
 3 decision). The ALJ is responsible for evaluating evidence, in part by resolving conflicts in
 4 medical testimony and resolving any other ambiguities that might exist. *Ford*, 950 F.3d at 1149
 5 (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). When the evidence is
 6 susceptible to more than one interpretation, the ALJ's interpretation must be upheld if rational.
 7 *Ford*, 950 F.3d at 1154. The Court "must consider the entire record as a whole" and may not
 8 affirm the ALJ's decision "simply by isolating a specific quantum of supporting evidence."
 9 *Ghanim v. Colvin*, 763 F.3d 1154, 1160 (9th Cir. 2014) (quoting *Hill v. Astrue*, 698 F.3d 1153,
 10 1159 (9th Cir. 2012) (internal quotation marks omitted)). Finally, this Court "may not reverse an
 11 ALJ's decision on account of a harmless error." *Buck v. Berryhill*, 869 F.3d 1040, 1048 (9th Cir.
 12 2017) (citing *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012)).

13 **B. The "Disabled" Determination**

14 Under the Social Security Act, a claimant is considered "disabled" if: (1) the individual is
 15 "unable to engage in any substantial gainful activity by reason of any medically determinable
 16 physical or mental impairment which can be expected to result in death or which has lasted or
 17 can be expected to last for a continuous period of not less than twelve months," 42 U.S.C.
 18 § 1382(c)(a)(3)(A); and (2) "the individual's physical or mental impairment or impairments are
 19 of such severity that [the person] is not only unable to do [the person's] previous work but
 20 cannot, considering [the person's] age, education, and work experience, engage in any other kind
 21 of substantial gainful work which exists in the national economy," 42 U.S.C. § 1382(c)(a)(3)(B).
 22 *See also Ford*, 950 F.3d at 1148 (citations omitted).

23 To determine whether a claimant is disabled within the meaning of the Social Security

Act (and, therefore, eligible for benefits), an ALJ follows a five-step sequential evaluation pursuant to 20 C.F.R. § 404.1520(a): (1) the claimant must not be engaged in “substantial gainful activity”; (2) the claimant’s impairment or combination of impairments must be severe enough to significantly limit the claimant’s “physical or mental ability to do basic work activities”; (3) the claimant’s impairment(s) must meet or equal the criteria of an impairment in the “Listing of Impairments” (“Listings”); (4) the claimant’s residual functional capacity (RFC) is assessed and the claimant must not be able to perform their “past relevant work”; and (5) the claimant must not be able to make an adjustment to other work. *See Ford*, 950 F.3d at 1148–49 (same).

If the claimant fails to make the required showing at any of these steps, the ALJ’s inquiry ends, and the claimant is found to not have a disability under the Social Security Act. The burden of proof is on the claimant at steps one through four but shifts to the agency to prove that “the claimant can perform a significant number of other jobs in the national economy” at the fifth step. *Id.* at 1149 (citation omitted).

III. DISCUSSION

Plaintiff contends the ALJ erred in evaluating her symptom testimony, specifically about her mental health.¹ Dkt. No. 14 at 2–4. During the 2020 hearing, Plaintiff testified to having schizophrenia and experiencing black outs where she is unable to recall what happened. Dkt. No. 6-2 at 43, 48–49. She also stated she cannot be around large group of people because she has panic attacks. *Id.* at 46–47. During the 2022 hearing, Plaintiff again testified she is unable to work because of her mental health. *Id.* at 76.

¹ Plaintiff also testified to having symptoms from physical impairments, but because Plaintiff only challenged the ALJ’s evaluation of her mental health symptoms in her Opening Brief, the Court does not address the ALJ’s evaluation of Plaintiff’s physical symptoms. *Carmickle v. Comm’r SSA*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to address an ALJ’s finding because the plaintiff “failed to argue th[e] issue with any specificity in his briefing”).

1 Where, as here, an ALJ determines that a claimant has presented objective medical
2 evidence establishing underlying impairments that could cause the symptoms alleged, and there
3 is no evidence of malingering, the ALJ can only discount the claimant's testimony as to
4 symptom severity "by offering specific, clear and convincing reasons for doing so." *Garrison v.*
5 *Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014). "The standard isn't whether our court is
6 convinced, but instead whether the ALJ's rationale is clear enough that it has the power to
7 convince." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

8 In this case, the ALJ primarily rejected Plaintiff's testimony because her medical record
9 indicated improvement in her symptoms with medication and treatment. Dkt. No. 6-3 at 158–60.
10 The ALJ's assessment of the record is supported by substantial evidence.

11 Plaintiff was admitted for in-patient treatment on several occasions throughout the
12 relevant period. Dkt. No. 6-7. at 532–35; Dkt. No. 6-8 at 75–80; Dkt. No. 6-10 at 622. Plaintiff's
13 mental status examination upon admittance in July 2017 shows she was uncooperative, laughed
14 at inappropriate times, had disorganized thought process, poor insight about her symptoms, and
15 was unwilling to participate in a treatment plan. Dkt. No. 6-7 at 533–34. Her progress notes show
16 she continued to have poor understanding about her mental health, disorganized thought process,
17 and poor decision making. *Id.* at 539, 544, 550. However, when she was discharged later that
18 month, she was observed to have "improved with inpatient treatment" and her "symptoms were
19 attenuated to the point of stabilization." *Id.* at 536.

20 Plaintiff's physical examinations thereafter show she was alert and oriented with normal
21 coordination, mood, affect, and behavior. Dkt. No. 6-7 at 678, 681; Dkt. No. 6-8 at 999, 1004,
22 1007. Plaintiff also began attending counseling sessions in July 2019. Dkt. No. 6-7 at 612. She
23 missed several sessions after her initial intake, but by August 2019, she reported she was able to

1 enroll in a computer class in a community college, she had taken a career readiness course, she
2 was excited about the possibility of getting her license reinstated, and she was actively pursuing
3 employment. Dkt. No. 6-7 at 621, 624. Plaintiff also reported she was working at Goodwill two
4 days a week and was focusing on attaining housing. *Id.* at 654, 659. Plaintiff's physical
5 examinations in November 2019 again showed she was alert, cooperative, oriented, not
6 depressed, though she was also observed as unkempt. Dkt. No. 6-8 at 990, 993–94.

7 Plaintiff attended in-patient treatment again from March 2020 to April 2020, from
8 October 2020 to November 2020, and from December 2020 to January 2021. *Id.* at 75; Dkt. No.
9 6-9 at 4; Dkt. No. 6-10 at 622. Progress notes from her March 2020 and October 2020 treatment
10 sessions indicate Plaintiff was stable or at least progressing towards stabilization with
11 medication. *See, e.g.*, Dkt. No. 6-8 at 700 (“[Plaintiff’s] mood and psychosis will stabilize as
12 evidenced by daily adherence to medication”); Dkt. No. 6-9 at 272–76 (stating Plaintiff was
13 treated with medication and therapy, and that at the time of discharge, Plaintiff was stable with
14 no delusions, impulsive thoughts, depressive, symptoms, or anxiety). Plaintiff’s discharge notes
15 in November 2020 show she was capable of completing activities of daily living and she was
16 recommended to continue her medication. Dkt. No. 6-9 at 274–76. After Plaintiff was discharged
17 in January 2021, Plaintiff continued to attend counseling sessions and was noted as making
18 progress based on Plaintiff’s initiative, responsiveness, and receptiveness. Dkt. No. 6-8 at 964–
19 65, 972; Dkt. No. 6-10 at 622. In April 2021, Plaintiff was observed as slightly more agitated
20 with “extremely limited insight,” but she also refused medication at the time. Dkt. No. 6-10 at
21 622. Subsequent progress notes state Plaintiff denied hallucinations and that Plaintiff’s
22 symptoms improved with adherence to medication. *Id.* at 600, 623 (“The [patient] appears to be
23 relatively psychiatrically stable with increasing functioning...”), 658. By September 2021,

1 Plaintiff reported her mood as “good,” she continued denying any hallucinations, and she was
2 taking medicine as prescribed. *Id.* at 622. She admitted she did not like taking her medicine, but
3 she was aware it was necessary if she did not want another “episode.” *Id.*

4 “Impairments that can be controlled effectively with medication are not disabling for the
5 purpose of determining eligibility for [social security disability] benefits.” *Warre ex rel. E.T. IV*
6 *v. Comm’r, SSA.*, 439 F.3d 1001, 1006 (9th Cir. 2006). Given that the record shows Plaintiff’s
7 mental health symptoms were generally controlled with medication and treatment, the ALJ,
8 therefore, could reasonably reject Plaintiff’s symptom testimony.

9 The ALJ also noted that while attending counseling sessions, Plaintiff’s living situation
10 improved. Dkt. No. 6-3 at 159. She moved to a new apartment, spent time with friends, shopped
11 for her own groceries, and joined a gym. *See* Dkt. No. 6-10 at 621, 629–33, 637–39. An ALJ
12 may reject a plaintiff’s symptom testimony based on her daily activities if they contradict her
13 testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*, 885 F.2d 597,
14 603 (9th Cir. 1989)). Plaintiff’s ability to partake in these activities directly contradicts her
15 statements about her difficulties being around other people. Further undercutting Plaintiff’s
16 allegations are her own statements from the 2022 hearing, where she testified about her
17 improvement from medication and weekly counseling sessions, as well as her ability to spend
18 time with friends and family and run errands by taking the bus. Dkt. No. 6-2 at 76–82. She also
19 testified she has not returned to in-patient treatment since she was discharged in January 2021.
20 *Id.* at 82–83.

21 The ALJ also rejected Plaintiff’s symptom testimony because Plaintiff expressed
22 reluctance to apply for jobs because of her criminal record. Dkt. No. 6-3 at 159. A claimant’s
23 statement that his or her impairment is not the reason they are unable to work undermines a

1 claimant's argument for disability. *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008).
2 The ALJ's two citations in support of this reasoning are not entirely convincing, as the first
3 record shows Plaintiff was more so apprehensive about attending school rather than working,
4 though the second does state Plaintiff lacked interest in working. Dkt. No. 6-3 at 159; Dkt. No. 6-
5 10 at 635, 643. Because the ALJ's reasoning here is not supported by substantial evidence, the
6 Court cannot say the ALJ permissibly rejected Plaintiff's testimony based on this reason.
7 However, because the ALJ has provided at least one valid reason to reject Plaintiff's testimony
8 that is supported by substantial evidence, even if the ALJ's additional reasoning is erroneous, the
9 error would be deemed harmless. *See Carmickle*, 533 F.3d at 1162 (holding that the inclusion of
10 an erroneous reason among other reasons to discount a claimant's credibility does not negate the
11 validity of the overall credibility determination where an ALJ provides other reasons that are
12 supported by substantial evidence).

13 While Plaintiff concedes that her record demonstrates improvement after December
14 2020, she argues that she "would have been unable to sustain employment prior to those dates."
15 Dkt. No. 14 at 3. But the relevant period for this case is not limited to only before December
16 2020, and the ALJ's interpretation of Plaintiff's record from her alleged amended onset date of
17 December 21, 2016, through the date of the ALJ's decision is supported by the record showing
18 Plaintiff's symptoms were managed (and, therefore, manageable at an earlier date) with her
19 compliance with medication and treatment. *Warre ex rel. E.T. IV.*, 439 F.3d at 1006.

20 Plaintiff also argues the Commissioner's citation to the record is "selective" and cites to
21 treatment notes showing Plaintiff was often found anxious, depressed, or both. Dkt. No. 19 at 2.
22 But most of the evidence cited by Plaintiff are from her in-patient treatment sessions when was
23 not consistent with her medication. *See* Dkt. No. 6-9 at 18, 21, 32, 35, 37, 91, 117, 125, 134,

1 142–43, 148, 156.

2 “[W]hen the evidence is susceptible to more than one rational interpretation, [the Court]
3 must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the
4 record.” *Molina*, 674 F.3d at 1111. The ALJ’s interpretation of Plaintiff’s overall record is a
5 rational one and supported by the record, thus, the Court finds the ALJ did not err in rejecting
6 Plaintiff’s testimony.

7 **IV. CONCLUSION**

8 Accordingly, the Commissioner’s final decision is AFFIRMED and this case is DISMISSED
9 with prejudice.

10 DATED this 24th day of July, 2023.

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Tana Lin
14 United States District Judge
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